

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

STATE BANK OF TEXAS.

Plaintiff,

V.

SAM PARABIA, ET AL.,

Defendants.

Case No.: 14-cv-3031-L-KSC

ORDER DENYING MOTION TO QUASH WRIT OF POSSESSION

Pending before the Court is Defendants' motion to quash writ of possession (doc. no. 319). Plaintiff filed an opposition and Defendants replied. For the reasons stated below, the motion is denied.

By order filed September 15, 2017, the Court granted Plaintiff's motions for summary adjudication against Defendant Citizens Business Bank and default judgment against Defendants Sam and Perin Parabia, Farzin Morena and Ayer Capital Advisors, Inc., thus allowing judicial foreclosure sale of the residence owned by Defendants Parabia to go forward. (Doc. no. 84.) Judgement was issued the same day. (Docs. no. 85, 86.)

In an apparent effort to delay, Defendants Parabia (hereinafter “Defendants”) filed a motion to reconsider, two bankruptcy proceedings, a state court action, a motion to reconsider the default judgment entered in this case, and a motion for a temporary

1 restraining order. Accordingly, a judicial foreclosure sale was not held until October 9,
2 2019.

3 Plaintiff was the successful bidder at the foreclosure sale and became the purchaser
4 of Defendants' property. Because the property was sold subject to the right of
5 redemption, Defendants retained a right to stay in possession for 90 days. During this
6 period, Defendants refused Plaintiff's inspection of the property, necessitating the filing
7 of a motion for a temporary restraining order. (*See* doc. no. 295.) Defendants did not
8 object to the restraining order, except insofar as it required them to pay rent during their
9 possession. (*See* doc. no. 299.) Although the Court found that they were required to pay
10 rent pursuant to California Code of Civil Procedure § 729.090 (doc. no. 307), as of the
11 end of the redemption period on January 8, 2020, they had paid none (doc. no. 329-3
12 ("Hunt Decl.") at 3 & Ex. 7.)

13 On January, 17, 2020, after the expiration of the redemption period, the U.S.
14 Marshal recorded the Deed of Sale of the property. On January, 21, 2020, Defendants
15 served a 3-Day Notice to Quit and a Notice to Any Renters. (Hunt Decl. at 2 & Exs. 3-
16 5.) On the same day and again on January 27, 2020, Plaintiff's counsel contacted
17 Defendants' counsel inquiring whether Defendants had vacated the property at the end of
18 the redemption period or would be willing to vacate voluntarily, and attached the 3-Day
19 Notice to Quit and Notice to Any Renters. (*Id.* at 2 & Exs. 7, 8.) Defendants' counsel
20 did not respond. (*Id.* at 3.)

21 On January 29, 2020, Plaintiff sought a writ of possession from the Court, which
22 was issued the next day. (Doc. no. 316.) On February 19, 2020, Rajesh Patel, receiver
23 for the property, together with two U.S. Marshal's deputies went to the property, which
24 appeared unoccupied. (Doc. no. 329-12 ("Patel Decl.") at 2.) The deputies authorized
25 the locksmith to change locks and thus allow Plaintiff to take possession. (*Id.*)

26 Pending before the Court is Defendants' motion to quash writ of possession
27 because they want to challenge validity of the judicial foreclosure sale in an unlawful
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1 detainer proceeding, which they claim Plaintiff must file before it can obtain a writ of
2 possession. The Court disagrees because none of Defendants' contentions support setting
3 aside the sale, and because an unlawful detainer judgment is not required for this Court to
4 issue a writ of possession.

5 First, Defendants contend that the sale was invalid because they did not get proper
6 notice of their right of redemption. Defendants' reliance on *Multani v. Witkin & Neal*,
7 215 Cal.App.4th 1428 (2013), for the proposition that the sale of their property can be set
8 aside on this ground, is unavailing. Unlike a non-judicial foreclosure sale at issue in
9 *Multani*, a judicial foreclosure sale at issue here may be set aside subject to California
10 Code of Civil Procedure 701.680, which provides in pertinent part:

11 (a) Except as provided in paragraph (1) of subdivision (c), a sale of property
12 pursuant to this article is absolute and shall not be set aside for any reason.

13 [¶]

14 (c) If the sale was improper because of irregularities in the proceedings,
15 because the property sold was not subject to execution, or for any other
16 reason:

17 (1) The judgment debtor . . . may commence an action within 90 days after
18 the date of sale to set aside the sale if the purchaser at the sale is the
19 judgment creditor. . . . [I]f the sale is set aside, the judgment of the
20 judgment creditor is revived to reflect the amount that was satisfied from the
proceeds of the sale and the judgment creditor is entitled to interest on the
amount of the judgment as so revived as if the sale had not been made. . . .

21 Plaintiff, who purchased the property, is the judgment creditor. Defendants have not
22 commenced an action to set aside the sale, nor, given their multi-year history of non-
23 payment, does it appear that they would be able to satisfy the judgment which would be
24 immediately revived if the sale were set aside. After the expiration of the 90-day period,
25 the sale "is absolute and may not be set aside for any reason." *First Fed. bank of Cal. v.*
26 *Fegen*, 131 Cal. App. 4th 798, 801 (2005).

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1 Moreover, even if this were a non-judicial trustee's foreclosure sale, and therefore
2 subject to strict compliance with statutory requirements, *see Multani*, 215 Cal. App. 4th
3 at 1448, Defendants would not have met the burden.

4 To set aside a foreclosure, a plaintiff must generally establish three
5 elements: "(1) the trustee . . . caused an illegal, fraudulent, or willfully
6 oppressive sale of real property pursuant to a power of sale in a mortgage or
7 deed of trust; (2) the party attacking the sale . . . was prejudiced or harmed;
8 and (3) in cases where the trustor . . . challenges the sale, the trustor . . .
tendered the amount of the secured indebtedness or was excused from
tendering."

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10 *Id.* at 1449 (ellipses in original).

11 Defendants contend the sale should be set aside for failure to receive notice of the
12 right of redemption pursuant to California Civil Procedure Code § 729.050, as was the
13 case in *Multani*. Unlike in *Multani*, Plaintiffs provided evidence that Defendants
14 received repeated actual notice of their right of redemption, including that the order
15 granting default judgment stated the sale was subject to the right of redemption (doc. no.
16 84 at 9, 11); on the day of the sale, Plaintiff's counsel informed Defendants' counsel that
17 they had a 90-day right of redemption (doc. no. 329-3 Ex. 1); and the order granting
18 Plaintiff's motion for a temporary restraining order stated the redemption period would
19 expire on January 8, 2020 (doc. no. 295 at 1, 11). Accordingly, the sale conducted
20 pursuant to the Court's order was not "illegal, fraudulent, or willfully oppressive."
21 Defendants were not prejudiced because they received actual notice. Finally, they have
22 not shown that they could tender the amount they owe Plaintiff. Defendants have
23 therefore not shown could meet any of the requirements enumerated in *Multani*.

24 Alternatively, Defendants claim that they could set aside the sale because they
25 were entitled to a 1-year redemption period rather than 90 days. Defendants were on
26 notice since the date of sale that they had a 90-day period of redemption. Although they
27 had several opportunities to object, they have not done so. (*See* docs. no. 299 at 1; 312 at
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1 2.) Moreover, their argument is negated by California Civil Procedure Code § 729.030,
2 which provides as follows:

3 The redemption period during which property may be redeemed from a
4 foreclosure sale under this chapter ends:

5 (a) Three months after the date of sale if the proceeds of the sale are
6 sufficient to satisfy the secured indebtedness with interest and costs of action
and of sale.

7 (b) One year after the date of sale if the proceeds of the sale are not
8 sufficient to satisfy the secured indebtedness with interest and costs of action
and of sale.

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11 The Court has made a finding that the judgment was satisfied in full and Plaintiff was not
12 seeking a deficiency judgment against Defendants. (Doc. no. 312 at 2-3.) Accordingly,
13 their argument that the sale could be set aside because they are entitled to a 1-year
14 redemption period is rejected.

15 Finally, underlying all of Defendants' arguments is the contention that the writ
16 should be recalled because Plaintiff was required to file an unlawful detainer action
17 before it could receive a writ of possession. This is not the case:

18 After entry of a judgment for possession or sale of property, a writ of
19 possession or sale shall be issued by the clerk of the court upon application
of the judgment creditor

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21 Cal. Code Civ. Proc. § 712.010.

22 Contrary to Defendants' contentions, a judgment for sale of property was entered
23 in this case based on the order granting Plaintiff's motion for default judgment. The
24 order expressly provided for foreclosure of the deed of trust, and ordered U.S. Marshal,
25 after the expiration of the right of redemption, to execute a deed of sale to the purchaser,
26 who could then take possession of the property. (Doc. no. 84 at 10-11 (order); *see also*
27 doc. no. 86 (judgment).) Plaintiff was the successful bidder and purchased the property /
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1 at the U.S. Marshal's sale. Defendants did not redeem the property. After the expiration
2 of Defendants' period of redemption, U.S. Marshal recorded the deed of sale. Plaintiff
3 was therefore entitled under section 712.010 to obtain a writ of possession from the Clerk
4 of Court.

5 For the foregoing reasons, Defendants' motion to quash is denied.

6 **IT IS SO ORDERED.**

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8 Dated: March 17, 2020

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10 Hon. M. James Lorenz
11 United States District Judge

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